

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LETICIA RODRIGUEZ,  
individually and d/b/a  
EMPERADOR AZTECA MEXICAN  
RESTAURANT,

Plaintiff,

v.

CITY OF MOSES LAKE, a  
Municipal Corporation; BRETT  
A. BASTIAN and JANE DOE  
BASTIAN, individually, and as  
a marital community,

Defendants.

NO. CV-07-329-EFS

**ORDER GRANTING AND DENYING AS  
MOOT IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Before the Court, without oral argument, is Defendant City of Moses Lake and Brett A. Bastian's Motion for Summary Judgment. (Ct. Rec. 18.) After reviewing the submitted material and relevant authority, the Court is fully informed and grants and denies as moot in part Defendants' motion. The reasons for the Court's Order are set forth below.

**I. Background<sup>1</sup>**

Plaintiff Leticia Rodriguez owns the Emperador Azteca Mexican restaurant in Moses Lake, Washington, and lives in a small house behind the restaurant. (Ct. Rec. 39 at 2.) At 3:40 a.m. on October 17, 2000, the Moses Lake Fire Department responded to a structure fire at Plaintiff's residence. *Id.* Defendant Brett Bastian, Moses Lake's Fire Marshal, investigated and determined that the fire was caused by a clothes dryer left running with the door open. (Ct. Rec. 21, Ex. 3.) Defendant Bastian's on-site investigation lasted approximately eight (8) hours. (Ct. Rec. 34 at 4.)

The next day, the Columbia Basin Herald reported on the fire. (Ct. Rec. 39 at 3.) The article identified Plaintiff's address and indicated the fire was caused by residents "using a dryer in the house for heat." *Id.* Plaintiff denies using the dryer for heat and insists fire department officials provided improper information to the newspaper. (Ct. Rec. 29 at 2.) After the article ran, Plaintiff received phone calls from individuals criticizing her "stupid" behavior. (Ct. Rec. 35 at 3.)

On October 19, 2000, Plaintiff's insurance adjuster, Kevin Rhoton, visited Plaintiff's residence to examine the damage. (Ct. Rec. 39 at 3.)

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<sup>1</sup>In a motion for summary judgment, the facts from the parties' pleadings are set forth in a light most favorable to the nonmoving party - here, that is Plaintiff. *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999). The Background also incorporates facts from the parties' Joint Statement of Uncontroverted Facts. (Ct. Rec. 39.)

1 During Mr. Rhoton's initial visit, he did not take photos, conduct an  
2 inventory, or speak with Plaintiff. *Id.*

3 On October 23, 2000, Defendant City of Moses Lake ordered the  
4 demolition of Plaintiff's house. (Ct. Rec. 29 at 3.) Two (2) days  
5 later, Mr. Rhoton asked Plaintiff to inventory all items lost in the  
6 fire. *Id.* Plaintiff's inventory included an Acrosonic piano, a Yamaha  
7 keyboard, and a juke box. (Ct. Re. 39 at 4.) These items belonged in  
8 the restaurant, but were temporarily located in Plaintiff's residence  
9 while the restaurant underwent a remodeling project. (Ct. Rec. 29 at 2.)  
10 The Yamaha keyboard and jukebox were stored in Plaintiff's basement; the  
11 Acrosonic piano was stored in Plaintiff's living room. *Id.* After the  
12 fire, a friend helped Plaintiff remove the fire-damaged piano from the  
13 living room to her new home; the Yamaha keyboard and the juke box were  
14 buried when the house was demolished. *Id.* at 3. Mr. Rhoton reviewed  
15 Plaintiff's inventory but did not ask about the piano, the Yamaha  
16 keyboard, or the juke box. *Id.*

17 On January 25, 2001, Mr. Rhoton contacted Defendant Bastian and  
18 inquired whether he noticed a piano, a Yamaha keyboard, or a juke box  
19 during his fire investigation. (Ct. Rec. 39 at 5.) Defendant Bastian  
20 responded and "confirm[ed] that these items were not present in  
21 [Plaintiff's residence] during the fire." (Ct. Rec. 36, Ex. 3.)

22 On November 16, 2001, the Grant County Prosecutor's Office charged  
23 Plaintiff with filing a fraudulent insurance claim. (Ct. Rec. 35 at 74.)  
24 On December 4, 2001, Plaintiff met with Defendant Bastian and showed him  
25 a current photo of the fire-damaged piano she removed from her old living  
26 room in order to prove its existence. *Id.* at 6-7. Plaintiff also

1 explained her old home had a basement that Defendant Bastian overlooked  
2 during his investigation. *Id.* Two (2) days later, Plaintiff visited  
3 Defendant Bastian again, this time requesting blue prints in order to  
4 prove her old home contained a basement. *Id.* at 7. Defendant Bastian  
5 denied having blue prints and directed Plaintiff to correspond with the  
6 Grant County Prosecutor's Office from now on. *Id.* at 81.

7 Plaintiff hired an attorney to defend her in the criminal action.  
8 *Id.* at 8. Plaintiff's attorney provided Grant County Prosecutor's Office  
9 with a list of exculpatory witnesses, a picture of the fire-damaged  
10 piano, and witness declarations. (Ct. Rec. 39 at 8.) Despite this  
11 information, the Prosecutor's Office declined to dismiss the case. Grant  
12 County Superior Court Judge John Antosz conducted a bench trial in mid-  
13 August 2002 and acquitted Plaintiff of all charges. (Ct. Rec. 35 at 8.)

14 On October 17, 2007, Plaintiff filed a Fourth Amended Complaint for  
15 Damages in Grant County Superior Court, alleging claims for defamation,  
16 outrage, malicious prosecution, and a 42 U.S.C. § 1983 claim based on  
17 discrimination. (Ct. Rec. 1-4.) Defendants removed the action to  
18 federal district court two (2) days later. (Ct. Rec. 1.) On October 6,  
19 2008, Defendants filed the summary judgment motion now before the Court.  
20 (Ct. Rec. 18.)

## 21 **II. Discussion**

### 22 **A. Summary Judgment Standard**

23 Summary judgment is appropriate if the "pleadings, the discovery and  
24 disclosure materials on file, and any affidavits show that there is no  
25 genuine issue as to any material fact and that the moving party is  
26 entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Once a

1 party has moved for summary judgment, the opposing party must point to  
2 specific facts establishing that there is a genuine issue for trial.  
3 *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving  
4 party fails to make such a showing for any of the elements essential to  
5 its case for which it bears the burden of proof, the trial court should  
6 grant the summary judgment motion. *Id.* at 322. "When the moving party  
7 has carried its burden of [showing that it is entitled to judgment as a  
8 matter of law], its opponent must do more than show that there is some  
9 metaphysical doubt as to material facts. In the language of [Rule 56],  
10 the nonmoving party must come forward with 'specific facts showing that  
11 there is a *genuine issue for trial*.'" *Matsushita Elec. Indus. Co. v.*  
12 *Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citations omitted)  
13 (emphasis in original opinion).

14 When considering a motion for summary judgment, a court should not  
15 weigh the evidence or assess credibility; instead, "the evidence of the  
16 non-movant is to be believed, and all justifiable inferences are to be  
17 drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255  
18 (1986). This does not mean that a court will accept as true assertions  
19 made by the non-moving party that are flatly contradicted by the record.  
20 *See Scott v. Harris*, 127 S. Ct. 1769, 1776 (2007) ("When opposing parties  
21 tell two different stories, one of which is blatantly contradicted by the  
22 record, so that no reasonable jury could believe it, a court should not  
23 adopt that version of the facts for purposes of ruling on a motion for  
24 summary judgment.").

1 **B. Section 1983 Liability**

2 Section 1983 creates a cause of action for the "deprivation of any  
3 rights, privileges, or immunities secured by the Constitution and the  
4 laws" of the United States. Establishing a section 1983 claim requires  
5 a plaintiff to show: 1) that a right secured by the Constitution or laws  
6 of the United States was violated, and 2) that the alleged violation was  
7 committed by a person acting under the color of State law. *Long v.*  
8 *County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

9 Here, Plaintiff asserts section 1983 claims against both  
10 Defendants.<sup>2</sup> Before delving into the details surrounding municipal  
11 liability and qualified immunity, it is necessary to address whether  
12 genuine factual issues regarding Plaintiff's alleged constitutional  
13 violations exist. Plaintiff asserts that Defendants' discriminatory  
14 behavior abridged her rights under the Equal Protection Clause, the Due  
15 Process Clause, the Privilege and Immunities Clause, and affected her  
16 right to interstate travel. Each alleged violation will be addressed in  
17 turn.

18 **1. Equal Protection Claim**

19 To succeed on a race-based equal protection claim, a plaintiff must  
20 prove that the defendant "acted in a discriminatory manner and that the  
21 discrimination was intentional." *Bingham v. City of Manhattan Beach*, 341  
22 F.3d 939, 948 (9th Cir. 2006). To survive summary judgment, a plaintiff

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23  
24 <sup>2</sup>A section 1983 claim against the City of Moses Lake is permissible,  
25 so long as it is not based on respondeat superior, because Congress  
26 intended the term 'person' to include municipalities. *Christie v. Iopa*,  
176 F.3d 1231, 1234 (9th Cir. 1999).

1 "must produce evidence sufficient to permit a reasonable trier of fact  
2 to find by a preponderance of the evidence that [the] decision . . . was  
3 racially motivated." *Keyser v. Sacramento City Unified Sch. Dist.*, 265  
4 F.3d 741, 754 (9th Cir. 2001) (citation and quotations omitted). Simply  
5 put, without proof of discriminatory intent or motive, a race-based equal  
6 protection claim cannot lie. *See Navarro v. Block*, 72 F.3d 712, 716 (9th  
7 Cir. 1996).

8 Even viewing the evidence in Plaintiff's favor, there is not a  
9 scintilla of evidence that Defendants acted with the discriminatory  
10 intent or motive necessary to establish a race-based equal protection  
11 claim. In fact, it is not even clear that Plaintiff asserted a race-  
12 based equal protection claim. Plaintiff's Fourth Amended Complaint is  
13 unhelpful. The complaint states a section 1983 cause of action based on  
14 discrimination without identifying the discrimination type (age, race,  
15 gender, etc.) or form (equal protection, due process, etc.); rather, it  
16 simply asserts that Defendants' actions "evinced intentional or  
17 purposeful discrimination." (Ct. Rec. 1-4 at 6.)

18 Plaintiff's summary judgment opposition is equally unhelpful. It  
19 is true the opposition memorandum's "Introduction" section asserts that  
20 "[a] jury could find that Ms. Rodriguez was treated differently by the  
21 predominantly-White police and fire department because she was Hispanic."  
22 (Ct. Rec. 28 at 2-3.) It is also true the opposition memorandum's  
23 "Statement of Facts" section claims that "Fire Marshall Bastian's zeal  
24 to prosecute a Hispanic business owner forced Ms. Rodriguez to hire  
25 attorneys to defend her for the criminal prosecution and trial."  
26 *Id.* at 9. But that is all. The only statement explicitly putting

1 Defendants - and the Court - on notice that a race-based equal protection  
2 claim exists is the following paragraph:

3 Ms. Rodriguez suffered an abuse of government power and  
4 violations of the most basic constitutional rights - a loss of  
5 her liberty, a denial of due process, a denial of equal  
6 protection, and violation of her privileges and immunities,  
7 and other violations. She had the right to not be subject to  
8 false accusations. The Fourteenth Amendment States: No State  
shall make or enforce any law which shall abridge the  
privileges or immunities of the citizens of the United States;  
nor shall any State deny any person of life, liberty or  
property, without due process of law, nor deny to any person  
within its jurisdiction the equal protection of the laws.

9 *Id.* at 11 (emphasis added) (internal quotations omitted). Despite this  
10 claim, nowhere does Plaintiff 1) identify the race-based equal protection  
11 standard, 2) argue that genuine factual issues regarding a race-based  
12 equal protection claim remain for trial, 3) point to any evidence that  
13 Defendants' conduct was racially motivated, or 4) demonstrate how  
14 Defendants treated her differently from other similarly-situated  
15 individuals. As best the Court can tell, Plaintiff's race-based  
16 discrimination claim rests on the fact that she is Hispanic and the  
17 City's fire department is predominantly white. Such basic and  
18 unsupported bases are insufficient to survive summary judgment. See  
19 *Bingham*, 341 F.3d at 948 (finding that an African-American driver, a  
20 white police officer, and an allegedly improper traffic stop is  
21 insufficient by itself to raise an inference of racial discrimination).  
22 Accordingly, summary judgment on Plaintiff's race-based equal protection  
23 claim is proper.

## 24 **2. Substantive Due Process Claim**

25 Substantive due process protects individuals from arbitrary  
26 deprivation of their liberty by the government. *Brittain v. Hansen*, 451



1 F.3d 982, 991 (9th Cir. 2006). To establish a substantive due process  
2 claim, a plaintiff must show that the government deprived him or her of  
3 life, liberty, or property in such a way that "shocks the conscience."  
4 *Id.*

5 Like Plaintiff's race-based equal protection claim, it is unclear  
6 if Plaintiff even asserts a substantive due process claim. Plaintiff's  
7 complaint references discrimination and her summary judgment opposition  
8 mentions "a denial of due process," but there are no cited facts or law  
9 to substantiate her vague reference.<sup>3</sup> Thus, the Court is left with no  
10 guidance on how Defendants' conduct allegedly "shocks the conscience" and  
11 denied Plaintiff life, liberty, or property. It is not the Court's task  
12 to scour the record in search of genuine factual issues regarding  
13 Plaintiff's substantive due process claim; rather, it is the non-moving  
14 parties' job to "identity with reasonable particularity the evidence that  
15 precludes summary judgment." *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th  
16 Cir. 1996). Plaintiff failed to do so. Even viewing the facts in  
17 Plaintiff's favor, summary judgment on Plaintiff's substantive due  
18 process claim is appropriate.

### 19 **3. Procedural Due Process**

20 The Fourteenth Amendment states that "[n]o state shall . . . deprive  
21 any person of life, liberty, or property, without due process of law.  
22 U.S. CONST. amend. XIV, § 1. Procedural due process applies only to the  
23 deprivation of interests encompassed by the Fourteenth Amendment's

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24  
25 <sup>3</sup>Even assuming Plaintiff is asserting a due process claim, the Court  
26 is unsure whether the claim is based on substantive or procedural due  
process deprivations. Out of caution, both will be addressed.

1 protection of liberty and property. *Bd. of Regents v. Roth*, 408 U.S.  
2 564, 569 (1972). To establish a procedural due process claim, a  
3 plaintiff must allege: 1) a liberty or property interest protected by the  
4 Constitution; 2) a deprivation of the interest by the government; and 3)  
5 lack of process. *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000).

6 Even viewing the evidence in Plaintiff's favor, her procedural due  
7 process claim fails as a matter of law because she set forth no facts  
8 establishing what liberty or property interest is at stake, how  
9 Defendants deprived her of a liberty or property interest, and what lack  
10 of process occurred. It is Plaintiff's, not the Court's, responsibility  
11 to identify genuine factual issues for trial. As the Ninth Circuit  
12 humorously stated: "judges are not like pigs, hunting for truffles buried  
13 in briefs." *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994). Summary  
14 judgment on this claim is proper.

#### 15 **4. Right to Interstate Travel**

16 In her summary judgment opposition, Plaintiff argues for the first  
17 time that her criminal pretrial release conditions prevented her from  
18 visiting family in Mexico and unlawfully burdened her right to interstate  
19 travel. (Ct. Rec. 28 at 12.) Plaintiff's complaint contains no hint of  
20 a section 1983 claim based on the right to interstate travel.  
21 Accordingly, this belatedly raised claim is not properly before the  
22 Court. See *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1291-92 (9th Cir.  
23 2000) (District court did not err in refusing to entertain new liability  
24 theory raised for the first time at the summary judgment stage.), *cert.*  
25 *denied*, 533 U.S. 950 (2001).

## 5. Privileges and Immunities Clause

Plaintiff also argues for the first time in her summary judgment opposition that Defendants violated her "privileges and immunities." (Ct. Rec. 28 at 11.) Lacking guidance from Plaintiff, the Court infers that she is referring to the Privileges and Immunities Clause of the Fourteenth Amendment, which states, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

U.S. CONST. amend. XIV, § 1. The only Supreme Court case to enumerate a specific privilege or immunity in this clause involved the "right to travel." *Saenz v. Roe*, 526 U.S. 489, 502-03 (1999).<sup>4</sup> Thus, the Court construes Plaintiff's reference to her "privileges and immunities" as a variation of the argument that Defendants burdened her right to interstate travel. As discussed above, the Court declines to entertain this belatedly raised claim. See *Coleman*, 232 F.3d at 1291-92.

## 6. Conclusion

After thoroughly reviewing the submitted material and supporting authority, the Court finds Plaintiff fails to state a viable section 1983 cause of action. Rule 56 demands *specific facts* showing genuine triable issues for trial. *Matsushita Elec. Indus. Co.*, 475 U.S. at 586-87

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<sup>4</sup>The Supreme Court's decision in *Saenz* "breathe[d] new life into the previously dormant Privileges and Immunities Clause of the Fourteenth Amendment . . . a provision relied upon for only the second time since its enactment 130 years ago." 526 U.S. at 511 (Rehnquist, C.J., dissenting).

(emphasis added). Plaintiff's "specific facts" are nothing more than sweeping, unsupported assertions referencing liberty losses, due process denials, and equal protection shortcomings. This will not do. Because both municipal liability and quality immunity discussions require a constitutional violation, which does not exist here, the Court need not engage in either analysis. See *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992) (noting three ways to establish section 1983 municipal liability, each of which requires a constitutional violation); *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (recognizing that the first step in a qualified immunity analysis requires a constitutional right violation). This is not to say that the Court does not empathize with Plaintiff who might have been spared anxiety and expense had someone taken the time to carefully examine her evidence before or even after the charges were filed.

## **7. State Law Claims**

Without Plaintiff's section 1983 claims, the question becomes what to do with her remaining state law claims. Under 28 U.S.C. § 1367(c)(3), a district court has discretion to decline supplemental jurisdiction over state claims if it has dismissed the federal claims over which it had original jurisdiction. *Brown v. Lucky Stores*, 246 F.3d 1182, 1189 (9th Cir. 2001). When jurisdiction-conferring claims are dismissed before trial, the remaining state law claims are properly remanded. See, e.g., *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (when single federal-law claim is eliminated before trial, court has powerful reason to chose not to continue to exercise supplemental jurisdiction); *O'Connor v. Nevada*, 27 F.3d 357, 362-63 (9th Cir. 1994) (in scenario where federal

1 claims are eliminated before trial, balance of factors of economy,  
2 convenience, fairness, and comity will point toward declining  
3 jurisdiction over remaining state claims); see also *Voigt v. Savell*, 70  
4 F.3d 1552, 1565 (9th Cir. 1995) ("[I]f the federal claims are dismissed  
5 before trial [] the state claims should be dismissed at well.") (internal  
6 citations omitted) (brackets in original).

7 Here, trial is still months away and the Court has yet to hold any  
8 hearings on the case. In keeping with the long-standing principle that  
9 federal courts are courts of limited jurisdiction, *Guglielmino v. McKee*  
10 *Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007), this Court declines to  
11 maintain jurisdiction over Plaintiff's state law claims now that her  
12 jurisdiction-conferring claims have been dismissed.

### 13 III. Conclusion

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Defendants' Motion for Summary Judgment (**Ct. Rec. 18**) is **GRANTED**  
16 (section 1983 claims) and **DENIED AS MOOT** (state law claims) **IN PART**.

17 2. This matter shall be **remanded** to Grant County Superior Court,  
18 Cause No. 02-201207-4, for further proceedings.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
20 this order and to provide copies to counsel.

21 **DATED** this 11<sup>th</sup> day of December 2008.

22  
23 S/ Edward F. Shea  
24 EDWARD F. SHEA  
25 United States District Judge  
26

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